

**Before the
COPYRIGHT OFFICE
LIBRARY OF CONGRESS
Washington, D.C.**

In the Matter of

Copyright Office Fees

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Docket No. 2012-1

COMMENTS OF THE COPYRIGHT OWNERS

Pursuant to the “Notice of Proposed Rulemaking” published at 77 Fed. Reg. 18742 (March 28, 2012) (“NPRM”), Program Suppliers, Joint Sports Claimants, Commercial Television Claimants, Music Claimants, Canadian Claimants Group, National Public Radio, Broadcaster Claimants Group, and Devotional Claimants (collectively “Copyright Owners”) submit their comments concerning the proposed filing fees for cable systems and satellite carriers as authorized by 17 U.S.C. § 111(d)(1)(G), § 119(b)(1)(C), and §§ 708(a)(10) and (11), which were enacted as part of the Satellite Television Extension and Localism Act, P.L. 111-175 (“STELA”).

In STELA Congress directed the Copyright Office to adopt filing fees that are “reasonable” and that “may not exceed one-half of the cost necessary to cover reasonable expenses incurred by the Copyright Office for the collection and administration of the statements of account and any royalty fees deposited with such statements.” 17 U.S.C. § 708(a). Although filing fees for the cable and satellite compulsory licenses are being promulgated for the first time in this rulemaking, the Licensing Division has deducted its costs for the collection and administration of the cable and satellite royalty funds from the funds since the licenses were adopted. The NPRM’s proposed filing fees are not derived from -- and reflect only a small

portion of -- those actual reported operating costs. Therefore, the proposed fees are not “reasonable” and do not achieve the legislative objective of equitably sharing the Office’s costs between Copyright Owners, on the one hand, and the beneficiaries of the cable and satellite compulsory licenses, on the other hand.

The Licensing Division of the Copyright Office “administers the compulsory and statutory licenses in the Copyright Act.” Copyright Office Circular 75, “The Licensing Division of the Copyright Office,” *available at* www.copyright.gov/circs/circ75.pdf (“Circular 75”). Under the Copyright Act, the Office can deduct “reasonable costs incurred . . . in administering the statutory licenses for cable systems and satellite carriers . . . from the royalty fees deposited for those licenses.” Circular 75; *see* 17 U.S.C. § 111(d)(2) (allowing deduction from cable royalty fund of “the reasonable costs incurred by the Copyright Office under this section”); *id.* §119(b)(3) (same). In fact, the Office deducts the “*full* operating costs” of the Licensing Division from the cable, satellite and DART royalty fees. Circular 75 (emphasis added). Those costs are far greater than the costs the Office has used to calculate the filing fees proposed in the NPRM.

The disconnect is most dramatic for the proposed satellite filing fees. The Office apportioned \$525,554.69 of its FY 2011 operating costs to the satellite royalty fund -- nearly ten times the amount of operating costs apportioned to the satellite fund in FY 2008. *See* Licensing Division Operating Costs for FY 2011 (as of 9/30/2011) (“Operating Costs”), attached as Exhibit A; Licensing Division Operating Costs for FY 2008 (as of 9/30/2008), attached as Exhibit B. But the NPRM’s proposed satellite filing fee calculation did not start with those actual FY 2011 costs. Rather, the starting point for the proposed filing fee calculation was a mere \$1,256. *See* “Additional Information on the New Filing Fees Authorized under [STELA],” *available at*

<http://www.copyright.gov/docs/newfees/fees-stela.html> (“Additional Information”). That amount represents only 0.239% of the Licensing Division’s reported FY 2011 satellite operating costs of \$525,554.69. To put the NPRM’s cost estimate of \$1,256 in perspective, that amount does not even cover the postage and telephone services costs (\$1,308) that the Licensing Division deducted from the satellite royalty fund. *See Operating Costs.*

Likewise, the Office derived its proposed filing fees for cable from a cost estimate of only \$2.414 million, approximately one-half of the Licensing Division’s FY 2011 actual operating costs of nearly \$4.6 million. *Compare Additional Information with Operating Costs.* The proposed cable filing fees (which the Office estimates would generate only about \$1.157 million, *see Additional Information*) would require owners to bear nearly 75% of the Licensing Division’s costs for administering the cable license (in addition to all of the other costs that they bear under the compulsory licenses).

The proposed filing fees appear to be premised on a view that the Office should consider only “the time the Examining Section of the Licensing Division spends reviewing statements, the time spent by the Fiscal Section staff for fee intake, the time spent by the Information Section staff processing statements and answering questions related to filings, and current costs associated with the reengineering of the Licensing Division.” *See Additional Information.* The Office has failed to explain the vast disparity between the cost estimates used for the proposed filing fees and the actual costs that the Office has deducted from the cable and satellite royalty funds which, the Office says, represent the “reasonable costs incurred . . . in administering the statutory licenses for cable systems and satellite carriers.” Circular 75. The Office has not explained why the full amount of the costs deducted from the cable and satellite royalty funds is not the starting point for determining filing fees. Moreover, the Office has not provided any

information as to the specific time estimates that it used for the filing fee calculations and how those estimates relate to the costs actually deducted from the royalty funds.

The Copyright Owners believe that all the actual costs deducted from the royalty funds should have been included in determining the appropriate filing fees. If the Office did not include particular line items of the Licensing Division's actual operating costs in making that determination, at the very least it should have identified those items and explained why they are nonetheless considered reasonable expenses of administering the statutory licenses that can be deducted from the royalty funds. If the only "reasonable expenses incurred by the Copyright Office for the collection and administration of the [§ 119] statements of account and any royalty fees," 17 U.S.C. § 708(a), amount to a mere \$1,256 per year, the Office has no basis for deducting more than \$500,000 annually from the satellite royalty fund. Likewise, if the reasonable expenses for the cable licenses amount to \$2.414 million, there is no basis for deducting approximately \$4.6 million annually from the cable royalties. Because Congress authorized the Office to deduct from the royalty funds only the reasonable costs that the Office incurs in administering the Section 111 and 119 compulsory licenses, and required that filing fees reflect "one-half of the cost necessary to cover reasonable expenses" of administering the licenses, 17 U.S.C. § 708(a), the amounts used to determine filing fees should correspond to the amounts deducted from the royalty funds. No statutory basis exists for the Office to deduct from those royalty funds any costs that are not included in calculating reasonable filing fees.

The vast disparity in the calculations by the Copyright Office of reasonable costs for purposes of compulsory license royalty deductions and reasonable costs for purposes of determining license filing fees constitutes arbitrary and capricious decision making and cannot stand.

For these reasons, Copyright Owners submit that the proposed filing fees for the cable and satellite royalty licenses are inconsistent with the STELA's intent to recover from cable operators and satellite carriers their fair share of all the costs necessary to cover the reasonable expenses incurred by the Office in administering the licenses and that the Office deducts from the cable and satellite royalty funds. Copyright Owners urge the Office to recalculate the filing fees based on the actual operating costs deducted from the cable and satellite royalty funds.

Respectfully submitted,

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Date: May 14, 2012

Exhibit A

**LIBRARY OF CONGRESS
U.S. COPYRIGHT OFFICE
LICENSING DIVISION
OPERATING COSTS
As of 09/30/11**

FY 2011

| BOC | Description | Cumulative Commitments/ Obligations | Cable 86.831% | DART 3.188% | Satellite 9.981% |
|---|-------------------------------------|--|--------------------------|------------------------|-----------------------------|
| 1110 | Salaries and Compensation | \$1,969,519.15 | \$1,710,153.17 | \$62,788.27 | \$196,577.71 |
| 1111 | Terminal Leave | \$1,857.41 | \$1,612.81 | \$59.21 | \$185.39 |
| 1130 | Salaries -Other Than FTP | \$1,110.61 | \$964.35 | \$35.41 | \$110.85 |
| 1150 | Overtime | | | | |
| 1151 | Other Personal Comp | | | | |
| 1152 | Awards | | | | |
| 1181 | Special Pers Serv Payments | | | | |
| 1199 | Estimated Personnel Comp | | | | |
| 1210 | Personnel Benefits | \$522,882.15 | \$454,023.80 | \$16,669.48 | \$52,188.87 |
| 1295 | Transit Subs | \$21,874.30 | \$18,993.67 | \$697.35 | \$2,183.27 |
| 1299 | Estimated Benefits | | | | |
| Subtotal, Personnel Services | | \$2,517,243.62 | \$2,185,747.80 | \$80,249.73 | \$251,246.09 |
| 2101 | Travel - Regular | \$3,822.88 | \$3,319.44 | \$121.87 | \$381.56 |
| 2102 | Travel - Attendance at Meetings | | | | |
| 2103 | Travel - Local | | | | |
| 2201 | Transportation of Things | \$959.33 | \$833.00 | \$30.58 | \$95.75 |
| 2301 | Postage | \$3,460.83 | \$3,005.07 | \$110.33 | \$345.43 |
| 2310 | Local Telephone | \$4,751.44 | \$4,125.72 | \$151.48 | \$474.24 |
| 2320 | Long Distance Telephone | \$1,028.16 | \$892.76 | \$32.78 | \$102.62 |
| 2325 | Cellular Telephone services | \$3,865.21 | \$3,356.20 | \$123.22 | \$385.79 |
| 2409 | Printing | | | | |
| 2410 | Printing Services - In-House | \$907.96 | \$788.39 | \$28.95 | \$90.62 |
| 2411 | Printing Services - GPO | \$6,532.00 | \$5,671.80 | \$208.24 | \$651.96 |
| 2433 | Administrative Copier Program | \$2,496.48 | \$2,167.72 | \$79.59 | \$249.17 |
| 2501 | Other Services - Miscellaneous | \$589,415.19 | \$511,795.10 | \$18,790.56 | \$58,829.53 |
| 2508 | OS - SERV ITS | \$120,904.47 | \$104,982.56 | \$3,854.43 | \$12,067.48 |
| 2515 | Services of Other Agencies | | | | |
| 2516 | Services of Library of Congress | \$492,449.00 | \$427,598.39 | \$15,699.27 | \$49,151.33 |
| 2518 | Services of Copyright Office | \$204,617.00 | \$177,670.99 | \$6,523.19 | \$20,422.82 |
| 2520 | Tuition and Training | | | | |
| 2560 | Maintenance and Repair to Equipment | | | | |
| 2563 | Maintenance of Software | \$1,126.85 | \$978.46 | \$35.92 | \$112.47 |
| 2580 | Data Base Services | \$7,150.00 | \$6,208.42 | \$227.94 | \$713.64 |
| 2597 | SHPS-FSA Admin. Fees | \$318.60 | \$276.64 | \$10.16 | \$31.80 |
| 2599 | SER-OT-AG-TR | \$1,037.38 | \$900.77 | \$33.07 | \$103.54 |
| 2601 | Office Supplies | \$13,846.64 | \$12,023.18 | \$441.43 | \$1,382.03 |
| 2680 | Misc. Supplies & Materials | \$2,468.55 | \$2,143.47 | \$78.70 | \$246.39 |
| 3100 | Books and Library Materials | \$1,483.50 | \$1,288.14 | \$47.29 | \$148.07 |
| 3114 | Computer Software | \$1,285,666.31 | \$1,116,356.91 | \$40,987.04 | \$128,322.35 |
| 3146 | Equipment - ADP | | | | |
| 3150 | Furniture & Workstations | | | | |
| 3163 | Equipment - Security | | | | |
| 3179 | Equip&Of Mac | | | | |
| 4315 | Int Back Pay | | | | |
| Subtotal, Non-Personnel Services | | \$2,748,307.78 | \$2,386,383.13 | \$87,616.05 | \$274,308.60 |
| TOTAL OPERATING COSTS | | \$5,265,551.40 | \$4,572,130.93 | \$167,865.78 | \$525,554.69 |
| BUDGET AUTHORIZED BY CONGRESS | | \$5,449,080.00 | \$4,731,490.66 | \$173,716.67 | \$543,872.67 |

Exhibit B

**LIBRARY OF CONGRESS
U.S. COPYRIGHT OFFICE
LICENSING DIVISION
OPERATING COSTS
As of 09/30/2008**

FY 2008

| BOC | Description | Cumulative Commitments/ Obligations | Cable 95.643% | DART 2.539% | Satellite 1.818% |
|--|-------------------------------------|---|-----------------------|---------------------|---------------------|
| 1110 | Salaries and Compensation | \$1,828,216.14 | \$1,748,560.76 | \$46,418.41 | \$33,236.97 |
| 1111 | Terminal Leave | \$11,574.57 | \$11,070.27 | \$293.88 | \$210.43 |
| 1130 | Salaries -Other Than FTP | \$6,653.52 | \$6,363.63 | \$168.93 | \$120.96 |
| 1150 | Overtime | \$6,190.08 | \$5,920.38 | \$157.17 | \$112.54 |
| 1151 | Other Personal Comp | | | | |
| 1152 | Awards | \$3,564.00 | \$3,408.72 | \$90.49 | \$64.79 |
| 1181 | Special Pers Serv Payments | \$9,700.00 | \$9,277.37 | \$246.28 | \$176.35 |
| 1199 | Estimated Personnel Comp | \$14,148.00 | \$13,531.57 | \$359.22 | \$257.21 |
| 1210 | Personnel Benefits | \$458,525.22 | \$438,547.28 | \$11,641.96 | \$8,335.99 |
| 1295 | Transit Subs | \$20,246.95 | \$19,364.79 | \$514.07 | \$368.09 |
| 1299 | Estimated Benefits | \$3,657.00 | \$3,497.66 | \$92.85 | \$66.48 |
| Subtotal, Personnel Services | | \$2,362,475.48 | \$2,259,542.43 | \$59,983.25 | \$42,949.80 |
| 2101 | Travel - Regular | \$7,169.77 | \$6,857.38 | \$182.04 | \$130.35 |
| 2102 | Travel - Attendance at Meetings | | | | |
| 2103 | Travel - Local | | | | |
| 2201 | Transportation of Things | \$1,066.80 | \$1,020.32 | \$27.09 | \$19.39 |
| 2301 | Postage | \$12,190.00 | \$11,658.88 | \$309.50 | \$221.61 |
| 2310 | Local Telephone | \$6,043.42 | \$5,780.11 | \$153.44 | \$109.87 |
| 2320 | Long Distance Telephone | \$1,046.53 | \$1,000.93 | \$26.57 | \$19.03 |
| 2325 | Cellular Telephone services | \$197.07 | \$188.48 | \$5.00 | \$3.58 |
| 2409 | Printing | | | | |
| 2410 | Printing Services - In-House | \$77.13 | \$73.77 | \$1.96 | \$1.40 |
| 2411 | Printing Services - GPO | \$7,250.00 | \$6,934.12 | \$184.08 | \$131.81 |
| 2433 | Administrative Copier Program | \$7,735.99 | \$7,398.93 | \$196.42 | \$140.64 |
| 2501 | Other Services - Miscellaneous | \$13,321.88 | \$12,741.45 | \$338.24 | \$242.19 |
| 2508 | OS - SERV ITS | \$199,020.43 | \$190,349.11 | \$5,053.13 | \$3,618.19 |
| 2515 | Services of Other Agencies | \$2,969.00 | \$2,839.64 | \$75.38 | \$53.98 |
| 2516 | Services of Library of Congress | \$313,983.00 | \$300,302.76 | \$7,972.03 | \$5,708.21 |
| 2518 | Services of Copyright Office | \$122,422.00 | \$117,088.07 | \$3,108.29 | \$2,225.63 |
| 2520 | Tuition and Training | \$3,564.97 | \$3,409.64 | \$90.51 | \$64.81 |
| 2560 | Maintenance and Repair to Equipment | \$150.00 | \$143.46 | \$3.81 | \$2.73 |
| 2563 | Maintenance of Software | \$1,148.00 | \$1,097.98 | \$29.15 | \$20.87 |
| 2580 | Data Base Services | \$8,495.00 | \$8,124.87 | \$215.69 | \$154.44 |
| 2597 | SHPS-FSA Admin. Fees | \$212.40 | \$203.15 | \$5.39 | \$3.86 |
| 2599 | SER-OT-AG-TR | \$1,203.99 | \$1,151.53 | \$30.57 | \$21.89 |
| 2601 | Office Supplies | \$18,618.77 | \$17,807.55 | \$472.73 | \$338.49 |
| 3100 | Books and Library Materials | \$2,400.00 | \$2,295.43 | \$60.94 | \$43.63 |
| 3114 | Computer Software | | | | |
| 3146 | Equipment - ADP | \$3,336.20 | \$3,190.84 | \$84.71 | \$60.65 |
| 3150 | Furniture & Workstations | \$19,839.50 | \$18,975.09 | \$503.72 | \$360.68 |
| 3163 | Equipment - Security | | | | |
| 3179 | Equip&Of Mac | \$171.95 | \$164.46 | \$4.37 | \$3.13 |
| 4315 | Int Back Pay | | | | |
| Subtotal, Non-Personnel Services | | \$753,633.80 | \$720,797.98 | \$19,134.76 | \$13,701.06 |
| TOTAL OPERATING COSTS | | \$3,116,109.28 | \$2,980,340.41 | \$79,118.01 | \$56,650.87 |
| BUDGET AUTHORIZED BY CONGRESS³ | | \$3,999,975.00 | \$3,825,696.08 | \$101,559.37 | \$72,719.55 |